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August 27, 2018

Michael J. van Itallie, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Re: Response to Notice of Potential Liability and Request to Enter Administrative Settlement Agreement Negotiations for the Vo-Toys Superfund Site, Harrison, New Jersey

Dear Mr. van Itallie:

Please accept this letter on behalf of General Electric Company ("GE" or the "Company") in response to the United States Environmental Protection Agency, Region 2's ("EPA" and "Region 2") General Notice of Liability Letter ("GNL"), dated July 25, 2018. In that letter, EPA sets forth its explanation of GE's potential liability at the Vo-Toys Superfund Site ("Site") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and in particular CERCLA, Section 107(a), 42 U.S.C. § 9607(a). Specifically, EPA asks "whether GE is interested in entering into negotiations to fully finance response actions that likely will be necessary at the Site and to reimburse costs incurred by EPA with respect to the Site."

Despite not having owned or operated the Site for 91 years, GE has been and remains committed to working closely with EPA, NJDEP, and local stakeholders regarding historic environmental conditions and community safety risks and concerns. The Company is equally committed to working cooperatively with EPA in carrying out the characterization study that we initiated and which is well underway. And GE is willing to work in a positive and constructive manner going forward in discussions regarding the scope of potential future actions. As described below, while GE is willing to continue to participate to assess appropriate actions within the scope of any GE responsibility, we emphasize that the agencies must hold other responsible parties accountable as well. Although GE has solely conducted actions to date, it should not be asked to bear a disproportionate share of responsibility going forward.

Working together with the Agency and stakeholders, our voluntary and affirmative efforts have led to positive results to meet those priorities. With GE's good-faith commitments in mind, we ask the Agency to consider a few matters outlined below and detailed in our accompanying attachments, which respond more directly to issues raised separately by BRG.

- GE has conducted Site studies, remedial investigations and remedial actions in the subsurface and groundwater at the Site since 2013, when GE was first advised by the former owner and operator (V.I.P./Vo-Toys) of potential contamination in the subsurface at the Site.[1]

[1] In connection with the subsurface investigation, focused largely on USTs and VOCs, GE retained a New Jersey Licensed Site Professional ("LSRP") in 2013 to oversee the Company's remedial investigation and

- In addition to these ongoing remedial activities, GE has taken action to evaluate the potential presence and extent of mercury in building materials and interior subsurface structures and associated piping/conduits within Site buildings. GE proactively prepared a detailed Building Assessment Work Plan in March 2018. Following EPA's approval of the plan in May 2018, GE immediately began to perform the investigation to provide data to be used to assess potential building reuse (for residential and/or commercial development) and/or demolition for each of the three buildings (Buildings A, B, and C) on Site and to support EPA's selection of potential alternatives for remediation, potential redevelopment or other options for the buildings and for related activities (including options for disposal).
- This past Spring, local first responders and other stakeholders expressed concerns about the risk of fire at the remaining buildings and associated safety concerns among local residents. Shortly after GE was apprised of these concerns, the Company promptly hired a reputable fire watch company to provide round-the-clock security to alert first responders to fire and safety risks. Notably, immediately after hearing local concerns at our initial meeting with first responders, we reached out to our vendors to secure mercury vapor reading devices to ensure a safe working environment and to promote cooperation and good working relations.

At bottom, GE has assessed risks, developed timely and effective response actions, and performed remedial actions to address environmental conditions. To date, GE has responded quickly to accommodate the needs of various stakeholders and contractors, while moving diligently forward with the work at our sole expense and despite the fact that GE does not own the property.

While GE is willing to continue to engage in discussions, both as a matter of law and under principles of fairness and equity, GE should not be asked or expected to undertake or fund these actions alone. Because BRG Harrison Lofts Urban Renewal LLC ("BRG") is the owner and operator of the Site, and because it, in coordination with its controlling principals at the Albanese Organization, disposed of and mobilized hazardous substances (including mercury) at the Site, it must participate and cooperate in financing response actions and reimbursing EPA's and GE's costs. To date, GE alone has performed the work. GE's efforts to work cooperatively with BRG have been rebuffed, and even now, BRG refuses to acknowledge any responsibility for the safety, security, and environmental condition of the buildings that it owns.

We note that EPA sent a similar letter and request to BRG and that BRG's August 14 response lays out its position in some detail. Rather than address BRG's arguments here, GE attaches a more detailed explanation of why BRG's positions lack factual and legal merit and why its claim of penury lacks credibility. GE respectfully requests that EPA consider the facts, circumstances, and legal analysis set forth in the attached explanation in its determination about how to proceed in this matter.

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remedial action efforts. Over the course of the last five years, GE has engaged in response activities concerning the subsurface investigation at the Site under NJDEP Program Interest No. 020373. This work was performed under the oversight of a LSRP and pursuant to, among other laws and regulations, New Jersey's Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1, *et seq*., and the Technical Requirements for Site Remediation ("Technical Standards"), N.J.A.C. 7:26E-1.1, *et seq*. By way of brief examples of subsurface response activities, in the Summer of 2013, GE worked cooperatively with Vo-Toys and BRG to undertake a site investigation; it performed an independent preliminary assessment and remedial investigation (completed in 2014; and a final remedial investigation report was issued January 28, 2015). Later that year and into early 2016, in coordination with BRG, GE began remedial design and remedial action for the subsurface, including partial in-situ chemical oxidation injections. GE then performed the subsurface remedial work at the Site in June of 2016.

GE looks forward to working with EPA in the future to discuss performance and funding of further actions to address additional Site-related environmental conditions. As always, GE is available to meet with the Agency and others, if needed, to discuss this matter further.

Respectfully,

Eric S. Merrifield

cc: Eric J. Wilson, Deputy Director for Enforcement & Homeland Security
Roger Martella, GE
Dennis Toft, Esq.
Ira Gottlieb, Esq.

Response to BRG's Letter to EPA, dated August 14, 2018

In its August 14, 2018 response to EPA's GNL for the Vo-Toys Superfund Site in Harrison, New Jersey (the "Site"), BRG-Albanese[1] makes a number of conclusory statements that, with context and minimal scrutiny, are shown to lack factual accuracy, legal merit, or credibility. Because BRG's statements have been analyzed and tested through pleading, briefing and discovery in pending federal court litigation (BRG Harrison Lofts Urban Renewal LLC v. General Electric Co., et al., DNJ Action No: 2:16-CV-06577), considerable work exists to assist EPA in evaluating BRG's statements. GE respectfully requests that EPA consider this further analysis of BRG-Albanese's claims before deciding how to proceed at the Site.

1. BRG purchased industrial property, failed to conduct effective pre-purchase due diligence, and then caused a release of mercury that exacerbated environmental conditions at the Site.

BRG states that it "acquired the Site in 2015 *after* undertaking due diligence that meets the 'all appropriate inquiry' requirements of CERCLA." The adequacy of BRG's pre-purchase inquiry is directly at issue in the pending litigation, in which BRG has asserted breach of contract and professional malpractice claims against the two environmental consulting firms *that it retained* to conduct its due diligence.[2] BRG-Albanese's failure to conduct effective due diligence consistent with good commercial practices and/or the failure of its consulting firms to adequately perform such work does not absolve BRG of responsibility. And, as explained below, such failure itself is sufficient to show that they did not meet the stringent "all appropriate inquiry" standard. BRG and its controlling principals at the Albanese Organization are sophisticated commercial developers. As such, they come to this project with significant experience and expertise around potential environmental issues associated with redevelopment of former industrial properties.

Historically, from 1882 to 1927, Edison Lampworks and Edison General Electric manufactured incandescent lamps and other products on a much larger parcel, which included the buildings now at issue. In about 1927, the property was sold to Radio Company of America ("RCA"), which began making vacuum tubes at the Site. RCA was not affiliated with GE at that time.

In 1976, RCA closed its operations and sold the property and buildings to International Fastener Research Corporation ("IFRC"). A year later, in 1977, IFRC sold the property to V.I.P. Reality/Vo-Toys. In 1986, ten years after RCA sold the property and buildings to IFRC, GE acquired RCA. This happened approximately 40 years before BRG purchased the property from V.I.P./Vo-Toys. In fact, GE has not owned or operated at the Site for over 91 years. BRG inspected the buildings before it purchased the Site, researched its background and conducted other due diligence with the assistance of an environmental consultant, EWMA.

Between 2012 and 2015, BRG carefully negotiated its purchase of the Site with the former owner and operator and with environmental conditions firmly in mind.[3] Following additional environmental investigations, it then entered into an indemnity and settlement agreement with GE, which released GE from BRG's current claims in

[1] Because the Albanese Organization is the dominant, controlling force in BRG, we refer to them collectively as "BRG-Albanese."

[2] In its Amended Complaint, BRG specifically alleges that its due diligence consultant "breached the Environmental Services Agreement by failing to perform in a workmanlike manner the Services BRG compensated EWMA [the consultant] to perform. EWMA's breaches included failing to question AET's mercury sampling results in light of the historical operations at the Site . . . coupled with the manner in which those results were presented, and in turn, to either take measures to ensure that AET conducted proper mercury sampling at the Site or retain another qualified professional to do so." Am. Compl. P. 35, ¶213.

[3] We note that BRG engaged in litigation with the prior owner/operator of the Site and admitted its knowledge of the Site's history as well as its undertaking regarding mercury.

exchange for GE's agreement to address subsurface conditions at the Site. In fact, the BRG-GE settlement agreement specifically states that such things as mercury in building materials would not be GE's responsibility (at least as between BRG and GE).

Shortly after BRG purchased and closed on the property in 2015, it started aggressive and comprehensive interior demolition work, including lead paint abatement efforts (*e.g.,* power-washing of walls). In October 2015, as part of the preparation for remediation of previously identified mercury contamination, BRG-Albanese detected mercury vapor at elevated levels on the second and third floors of Building C that were inconsistent with prior pre-purchase results. BRG-Albanese informed GE of these results by e-mail. This was the first time GE heard of a potential expanded issue concerning mercury within the building interiors. BRG-Albanese subsequently performed preliminary vapor testing in Buildings A and B, as well as screening on the third floor of Building C, in mid-October 2015. GE was not informed of this additional testing, or its results, until months later. Despite these testing results, BRG-Albanese proceeded with demolition work and power-washing of walls, which likely caused the dispersal of water, debris and materials contained within the building structures.

In January 2016, environmental consultants hired by EWMA conducted additional mercury vapor sampling in all three buildings and detected mercury vapor at levels in the buildings' interiors ranging from <1 ug/m³ to as much as 50-100 ug/m³ in some locations. Some elemental mercury was also found beneath floor boards and in other interior surface locations. GE was not advised of the additional sampling activities from October 2015 or the January 2016 testing until mid-January 2016, when BRG-Albanese first informed GE of the new and more pervasive mercury vapor detections. The elevated levels of mercury are likely directly related to BRG-Albanese's own redevelopment activities at the Site.

BRG-Albanese's pre-purchase failure to detect the elevated mercury concentrations pervasive throughout the buildings resulted from its own failures and the professional malpractice of its due diligence consultants, which led to BRG-Albanese's discharge, release, and mobilization of contaminants. Moreover, BRG-Albanese's own post-purchase construction activities exacerbated existing conditions, which may have been largely contained but for its aggressive demolition efforts and other operations.

2. <u>BRG is an Owner and Operator of the Site and Facility.</u>

Under CERCLA Sections 107(a)(1) and (2), BRG-Albanese is the owner and operator of a facility (the Site and buildings), and "who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of. . . ." 42 U.S.C. § 9607(a)(1) and (2). A developer, like BRG, that engages in site activities that results in the movement or dispersal of hazardous substances is not only a facility owner, but also an operator who is responsible for the disposal of hazardous substances. *See, e.g.*, *Bonnieview Homeowners Ass'n v. Woodmont Builders, L.L.C.,* 655 F. Supp. 2d 473, 492–93 (D.N.J. 2009) (holding builder who dispersed contaminated soil for housing redevelopment is an "operator" that disposed of hazardous substances under CERCLA Sections 107(a)(1) and (2)); *Kaiser Aluminum & Chem. Corp. v. Catellus Dev. Corp.*, 976 F.2d 1338, 1341–42 (9th Cir. 1992) (holding housing developer who dispersed hazardous chemicals over property while excavating and grading it for housing development is an "operator" under CERCLA Section 107(a)(1)).

BRG's and Albanese's business records, produced in discovery in their litigation against GE and other parties, shows that they not only conducted extensive demolition activities at the Site shortly before newly elevated levels of mercury were detected, but that they were aware that such activity would cause the dispersal of hazardous materials. For example, in an email from an Albanese senior project manager, dated September 22, 2015, less than a month before new rounds of mercury vapor sampling, he reports to other BRG representatives, "[w]e are doing dirty dusty work now but shortly we will be doing a lead abatement that will have a lot of water and it will be really messy. Some areas will be sealed and access may not be allowed pending this type of work."

See Exhibit A,[4] 9/22/2015 email from M. Frankenberry to various other Albanese and BRG representatives. Other emails that are contemporaneous with the mercury vapor sampling show that lead abatement power-washing was going on seemingly simultaneously. *See* Exhibit B, 10/19/2015 email from M. Frankenberry to various BRG-Albanese contractors and representatives ("We have the lead contractor in both A&B. . . . [W]e need them to cover the 1st floor wood floors before they go any further. As you can see a tremendous amount of water is going between floors.").[5] There are other subsequent emails that evidence the timeframe for lead abatement work (Oct. 20, 2015 through Feb. 3, 2016) and that BRG-Albanese's contractor likely did not keep accurate work logs. *See, e.g.,* Exhibit C, email from James Wansor (Albanese) to BRG-Albanese's contractor. There are numerous other documents that evidence BRG-Albanese active demolition and lead abatement work at the Site during this critical timeframe.

Based upon the factual record, BRG-Albanese are the owners and operators of a facility (the Site and buildings) and were directly responsible for releases at the time of disposal of hazardous substances (namely, mercury). As a result, they are liable parties under 42 U.S.C. § 9607(a)(1) and (2).

3. <u>BRG is not a Bona Fide Prospective Purchaser or an Innocent Landowner.</u>

BRG is not an "innocent landowner," nor is it a bona fide prospective purchaser.[6] It therefore cannot avoid liability with respect to the Site. These limited defenses to CERCLA liability are only available to landowners who meet articulated threshold criteria and satisfy certain continuing obligations. Under at least the following Sections of CERCLA, as well as EPA's implementing regulations, BRG-Albanese must establish by a preponderance of evidence at least the following statutory requirements:

- 42 U.S.C.§ 9601(35)(A)(i) requires that "[a]t the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance, which is the subject of the release or threatened release was disposed of on, in, or at the facility;
- 42 U.S.C. § 9601(35) (B)(i)(I) provides that "on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

  (II) the defendant took reasonable steps to—

  (aa) stop any continuing release;

  (bb) prevent any threatened future release; and

  (cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance."
- 42 U.S.C.§ 9601(40)(B)(ii) (I) requiring that "[t]he person [seeking to avoid liability] made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with subclauses";

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[4] For ease of reference, the documents cited and relied on here are provided in the attached exhibits.

[5] At the time, GE was unaware of the results of the ongoing vapor sampling.

[6] BRG's August 14, 2018 letter to EPA takes the position that it is a Bona Fide Prospective Purchaser yet cites to the statutory provisions related to both BFPP and innocent landowner. Considering BRG admits it knew of mercury contamination prior to its purchase, the innocent landowner defense could not apply, but GE references both due to BRG's citation to both portions of the statute.

- 42 U.S.C.§ 9601(40)(B)(iv) Care, establishing that "[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

  (I) stop any continuing release;

  (II) prevent any threatened future release; and

  (III) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance"

- 42 U.S.C.§ 9607(r), which establishes that a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

BRG cannot meet these standards or the burden of showing it is entitled to a bona fide prospective purchaser defense. (*See, e.g.,* the above discussions of BRG-Albanese failure to conduct proper or sufficient due diligence and its demolition and power-washing activities.)

In light of the long industrial history of the facility, which BRG-Albanese admittedly knew about before purchasing the Site, they cannot credibly claim that they did not know or have reason to know that any hazardous substance, including mercury, was released or was a threat to be released on, in, or at the facility. In fact, BRG's allegations against GE in federal court admit that it was well aware of the industrial use of mercury at the property and the discovery in that lawsuit demonstrates that it was aware of the potential release of mercury. It may be that BRG-Albanese's environmental consultants did not properly undertake due diligence investigations or studies, but, as previously noted, this alleged failure does not excuse BRG from liability. Therefore, BRG does not meet its burden under 42 U.S.C.§ 9601(35)(A)(i), or for that matter under 42 U.S.C.§ 9607(r).

BRG cannot meet the "all appropriate inquiries" requirements of 42 U.S.C. § 9601(35) (B)(i)(I) and 42 U.S.C.§ 9601(40)(B)(ii) (I) and EPA's standards for all appropriate inquires, which are mandated by 40 CFR §312.1, *et seq*. Among other reasons for this failure by BRG-Albanese, there is no written report on behalf of BRG-Albanese which includes (1) "an opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances . . . on, at, in, or to the [Site]; and, (2) an identification of data gaps . . . in the information developed as part of the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances." 40 C.F.R. § 312.21(c)(1)-(2). Nor does any written report include the required declaration, or something similar, from an environmental professional. *See id.* at § 312.21(d).

Although BRG may argue that its 2013 Preliminary Site Assessment Report ("PAR") undertook to evaluate contamination that should be deemed an "appropriate inquiry," the PAR is fraught with procedural and methodological missteps that ultimately lead to an inaccurate report. As just a few basic examples, the PAR does not specify the type of equipment used to perform the survey, including detection limits; weather conditions during the survey; and the building conditions during the survey (*e.g.*, ventilation, air conditioning, interior temperature, ongoing work activities). Further, as noted above, it does not contain the type of certifications necessary to meet the "all appropriate inquiries" standard.

As BRG acknowledges, its pre-purchase investigation in 2013 did reveal mercury contamination in Building C. Yet, despite knowing about the industrial history of the Site, it went no further in its investigation. In 2015, when BRG-Albanese's environmental consultants performed indoor air mercury vapor monitoring in preparation for remedial work in Building C, it returned results inconsistent with past survey data. BRG-Albanese then had its contractor survey all three buildings between October 16-21, 2015, but all the while allowing demolition

activities, including lead abatement power-washing, to proceed. As indicated on the attached grids, there was a marked difference in vapor sampling results following BRG-Albanese's demolition and lead paint abatement power-washing activities. Exhibit D, Figures from Anchor QEA Mercury Data Summary Report for Vo-Toys Site (Oct. 16). BRG's demolition and power-washing activities certainly did "not stop any continuing releases; prevent any threatened future release; and did not prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." *See* 42 U.S.C.§ 9601(40)(B)(iv).

Moreover, the October round of mercury vapor sampling undertaken in Buildings A, B and C was conducted with open windows, operating exhaust fans, lower temperatures than the week before when the initial elevated levels were detected, and with plastic sheeting over certain areas of the floor. The floor covering is notable since BRG-Albanese had been told specifically by its contractor that the wood floors were a likely source of contamination. Although BRG-Albanese had informed GE of its initial discovery of elevated readings at Building C, it did not immediately advise GE of the additional monitoring undertaken at all three buildings.

The October 2015 sampling raised concerns and questions between BRG-Albanese and their consultants as to whether another round of testing should be completed. However, BRG-Albanese determined to move forward with continued demolition and worry about further testing later. Their inaction (or worse, blind disregard) in October 2015, and further demolition work, certainly do not constitute "appropriate care" within the meaning of CERCLA § 101(40)(C). By continuing its demolition activities in the face of elevated mercury readings and intentionally putting off follow-up testing so its construction venture could continue clearly show BRG-Albanese did not take "reasonable steps to (i) stop any continuing release; and (ii) prevent any threatened future release." 42 U.S.C.§ 9601(40)(B)(iv).

Based on its own sampling in October 2015, BRG had reason to know that mercury contamination might be more pervasive at its buildings than originally contemplated. Indeed, BRG-Albanese's demolition and other operations at the Site constitute "disposal" activities. *See Bonnieview Homeowners Ass'n,* 655 F. Supp. 2d at 492–93 (D.N.J. 2009). Moreover, as discussed earlier, BRG-Albanese has not acted cooperatively or meaningfully assisted with respect to the investigation of Site conditions. Instead, it has failed to contribute in any material way to the process and has only begrudgingly been involved, to the minimum extent necessary, to advance its own pecuniary interests. As a result, BRG does not meet the requirements of the bona fide prospective purchaser defense. It is a liable party that should be participating in the process and contributing financially to the Site work and reimbursement of EPA's necessary costs.[7]

4. <u>BRG-Albanese's Ability to Pay Assertion Lacks Credibility.</u>

GE understands that BRG asserts that it does not have the ability to pay or fully finance response actions that may be necessary at the Site and to reimburse costs incurred by EPA with respect to the Site. GE does not believe this is a credible assertion and encourages EPA to scrutinize any such claim, not only under the applicable ATP standards, but in view of the facts and circumstances of this matter.[8]

While the BRG entity itself may ostensibly be a single-purpose entity, its financial means and wherewithal are substantial given the entity's direct connection with the Albanese Organization. In connection with its assuming an approximate 50% equity interest in BRG, the Albanese Organization's Chief Financial Officer informed the

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7 In the unlikely event that EPA should deem BRG-Albanese to be a bona fide prospective purchaser, GE encourages EPA to immediately send BRG a notice of lien, including for a windfall lien, under 42 U.S.C.§ 9607(r)(2), as well as under 42 U.S.C.§ 9607(l).

8 GE requests that EPA keep it apprised of any ATP submissions and provide it with an opportunity to comment in more detail about any alleged basis for an ATP settlement with BRG, the Albanese Organization or any of their affiliates. GE further reserves the right to comment on and raise facts and arguments, and if necessary, object to any proposed ATP settlement with those parties.

Chairman of the Harrison Redevelopment Agency that Albanese has "developed properties in excess of one billion dollars and have always met their financial obligations." Exhibit E, 5/7/2015 Letter from James F. Polcari, CFO, to Gregory Kowalski, Chairman of Harrison Redevelopment Agency. He further assured the Agency that "[w]ith combined personal net worth in excess of 50 million dollars and liquidity in excess of 20 million dollars, Russell and Christopher [Albanese] possess the financial means to maintain the capital and liquidity levels to enable them to adequately invest in BRG Harrison Lofts Urban Renewal LLC and complete development of the project." *Id*.

The Amended and Restated Operating Agreement of BRG ("BRG Operating Agreement"), Section 2 (Purpose), specifically states that among its purposes the Members are obligated "to *remediate*, redevelop, renovate . . . the Property." Ex. F, Section 2.3(v) (emphasis added). The BRG Operating Agreement further states that its purposes include engaging in "all activities reasonably necessary for, or incidental to, the acquisition, *remediation*, redevelopment, renovation, improvement, *ownership*, *operation,* management, holding for investment . . . financing, . . . and other use of the Property." *Id.* at Section 2.3 (vii) (emphasis added). Accordingly, BRG's Members, including Albanese are liable parties with respect to funding remediation efforts for the Site property.

EPA's inquiry with respect to any ATP settlement request should require that all financial information regarding the joint venture and the BRG LLC's members be provided. This would necessarily include the Albanese Organization affiliates that are connected to the BRG entity and those members who represented to Harrison that they have the financial means to maintain the capital and liquidity levels to enable them to adequately invest in BRG Harrison Lofts Urban Renewal LLC and complete development of the project.[9]

5. GE's Efforts to Work Cooperatively, and BRG's Failure to Cooperate.

As a follow-up to the parties meeting with EPA in April 2017, and consistent with the EPA's request for an update, GE wrote to EPA on May 3, 2017, and explained:

> The parties have exchanged settlement proposals. GE's proposal would lead to timely characterization and assessment of the Site's buildings, and provides a path forward to resolve the parties' underlying dispute more quickly and efficiently. That said, at present the parties appear to be some distance apart in their views. Hopefully, we will bridge that gap in the coming days.
>
> GE would like to discuss with the Agency the idea of proceeding through a voluntary agreement, in lieu of the model form Administrative Order on Consent, which would be without prejudice to the parties' other rights. We understood from our meeting that EPA is open to proceeding via voluntary agreement. As we see it, such an agreement could provide for and reimburse Agency review and approval of building characterization efforts, as well as potential next steps, while reducing lag time that might otherwise occur.
>
> With respect to BRG's letter of April 27, we wish to make clear that BRG is not, as it has misstated, an "innocent owner" of the Site. Far from it, BRG failed to conduct "all appropriate inquiry" to determine whether there was mercury in the buildings pre-purchase, and took the property subject to that risk. Furthermore, BRG's own negligent conduct may have caused a discharge or exacerbated mercury conditions within the buildings' interiors.

[9] GE also reserves its right to raise veil piercing arguments concerning the Albanese Organization's dominant role and involvement in BRG.

Exhibit G. As evidenced by GE's May 3, 2017 letter, the Company has consistently remained willing to work cooperatively with the parties, but has been stymied by BRG or the controlling Albanese Organization's refusal to meaningfully participate in the process.

Following the parties' meeting with EPA in April 2017, and consistent with GE's efforts at that meeting, GE attempted to negotiate an arrangement with BRG whereby GE would promptly undertake building and site characterization in exchange for BRG taking on a small share of costs, providing Site access, preparing the Site for work and providing basic utilities (water and electric). This proposal was consistent with normal obligations for a site owner, not to mention a site owner who is also a responsible party. Nonetheless BRG refused to cooperate in any meaningful way.

As we believe EPA Region 2's Removal Branch would confirm, GE has responded quickly to requests and has worked to accommodate the needs of various stakeholders and contractors, while moving diligently forward with the investigation activities. Despite its contractual differences with BRG, GE attempted to work cooperatively with it as well, including an effort to negotiate a compromise amongst senior management. But those efforts have been rebuffed.

More recently, BRG's non-cooperative (and frankly, recalcitrant) conduct persisted when it failed to take action to secure its property and the Site from potential fires and other risks. As EPA is well aware, this past Spring, local first responders and other stakeholders expressed concern about the risk of fire at BRG's buildings. Plainly, protecting the buildings and the property against fire and other security risks should be the primary responsibility of the Site/building owner. Nonetheless, BRG refused to hire a fire watch or implement other fire detection or suppression measures, spend any funds, or assume any responsibility for protecting its own building and property. As EPA knows, shortly after GE was apprised of the matter and local concerns, it quickly hired a reputable fire watch company to provide 24-hour, seven day a week security.[10] Further, upon entering the buildings for the characterization work, GE and EPA learned of other conditions (such as broken windows, wide-spread bird guano, debris and other items and risks) that BRG had left exposed and unattended.

In sum, BRG has steadfastly refused to undertake almost all responsibility at the Site – including even those responsibilities typically borne by site owners and particularly those actions necessary to secure safety and avoid risks to its own property and the public. BRG's inaction and avoidance of responsibility is even more egregious when viewed, even briefly, in light of the facts that show that it not only failed in its own due diligence inquiries, but also likely discharged, dispersed and released mercury during its careless operations (demolition, power-washing and other development activities) at the Site. Furthermore, it is evident that BRG and its controlling principals (from the Albanese organization) are highly financially solvent, yet they seek to avoid all financial and other responsibility for the Site, including conditions that they should have been aware of, planned for,[11] and that they have caused or exacerbated.

[10] It is also noteworthy that BRG even delayed negotiation of a simple access agreement for implementation of the work plan, including objections related to utility hook-ups and use of a trailer for field work. These impediments evidence BRG's ongoing lack of cooperation that has slowed the process.

[11] Because the buildings were never slated for immediate demolition, BRG would necessarily have factored security-related costs into its cost model.